

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
RFD Communications, Inc.) MB Docket No. 06-92
DBS Set Aside Qualifications)

**OPPOSITION OF RFD COMMUNICATIONS, INC. TO
FARM JOURNAL, INC. PETITION FOR DECLARATORY RULING**

RFD Communications, Inc.
by
Lawrence W. Secrest, III
Todd M. Stansbury
Martha E. Heller
of
WILEY REIN & FIELDING LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

Its Attorneys

June 5, 2006

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY.....	1
II. RFD PROVIDES EXTENSIVE EDUCATIONAL AND INFORMATIONAL PROGRAMMING TO A TRADITIONALLY UNDERSERVED MARKET	6
III. RFD IS A TAX-EXEMPT “PUBLIC CHARITY” THAT IS A QUALIFIED NONCOMMERCIAL ENTITY WITH AN EDUCATIONAL PURPOSE UNDER THE COMMISSION’S RULES FOR SET-ASIDE CHANNELS.....	11
IV. RFD IS COMMITTED TO THE DELIVERY OF A PUBLIC SERVICE THAT SATISFIES THE COMMISSION’S STANDARDS FOR NONCOMMERCIAL EDUCATIONAL PROGRAMMING	14
A. RFD-TV’s Coverage of Livestock Auctions Provides Valuable Information to the Agricultural Community About an Essential Element of the Market and Is Consistent With the Network’s Noncommercial, Educational Mission	14
B. <i>RFD-TV Live</i> Delivers Valuable “Real World” Information to Farmers, Ranchers, and Rural Residents and Offers Unparalleled Opportunities for Viewers Nationwide to Interact with Lawmakers, Government Officials, and Experts in a Variety of Subjects of Unique Interest to Rural America.....	17
C. In View of Its Overall Record of Public Service, RFD’s Program Service Has Substantially Complied with the Commission’s Underwriting Requirements	20
V. RFD HAS ESTABLISHED AND IMPLEMENTED A DETAILED PLAN TO ENSURE COMPLIANCE WITH THE COMMISSION’S UNDERWRITING STANDARDS	22
VI. THE COMMISSION SHOULD CONFIRM THAT RFD IS A QUALIFIED NATIONAL EDUCATIONAL PROGRAMMING SUPPLIER THAT PROVIDES A NONCOMMERCIAL EDUCATIONAL AND INFORMATIONAL SERVICE TO THE PUBLIC.....	24
VII. CONCLUSION.....	25

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
RFD Communications, Inc.)	MB Docket No. 06-92
DBS Set Aside Qualifications)	

**OPPOSITION OF RFD COMMUNICATIONS, INC. TO
FARM JOURNAL, INC. PETITION FOR DECLARATORY RULING**

RFD Communications, Inc. (“RFD”), by counsel, opposes the Petition for Declaratory Ruling (“Petition”) filed by Farm Journal, Inc. (“Farm Journal”), which asks the Commission to declare that RFD is not a qualified national educational programming supplier for purposes of the Direct Broadcast Satellite (“DBS”) set-aside rules. As explained in detail below, RFD is a not-for-profit tax-exempt entity that distributes RFD-TV – a family-friendly noncommercial educational and informational programming network – which is the nation’s only full-time program service specifically targeted to the country’s rural and agricultural communities. Therefore, the Petition should be rejected.

I. INTRODUCTION AND SUMMARY

RFD-TV was launched in December of 2000, with two employees, as the first 24-hour nationally-distributed television network dedicated to serving the needs and interests of the nation’s rural community. To this day, RFD-TV remains the only such service devoted exclusively to this very important, but historically underserved, segment of the population. With its national reach, RFD-TV is able to address the common interests that bind this population, but it also seeks to deliver programming that meets the needs of discrete segments within the rural community. Thus, in addition to the impressive array

of educational and informational agricultural programs that cover regional, national, and international news and public affairs, conventions, and critical legislative initiatives affecting agriculture, RFD-TV offers dozens of programs of particular interest to the equine industry, rural music lovers, and people desperate for family-friendly cultural programming. As shown by the comments filed in this proceeding to date, the public overwhelmingly supports the educational and informational services offered exclusively by RFD-TV.

DIRECTV, Inc. and EchoStar Communications Corporation both currently carry RFD-TV in conjunction with the DBS “set-aside” program established by Congress in 1992. Of the 28 million viewers that RFD-TV now reaches, the vast majority have access to the network through DBS service. This is particularly true for the network’s rural viewers, many of whom rely on satellite as their only available source of multichannel video programming in general, and of RFD-TV in particular.

It is self-evident that Congress established the set-aside program in order to promote the availability of informational and educational programming on DBS services. In implementing this important legislative initiative, the Commission established five categories of “national educational programming suppliers” that are eligible for the set-aside.¹ The common thread running through these categories is that qualifying programmers must have an educational mission and must operate on a non-profit and noncommercial basis.² As a “public charity” organized for the purpose of delivering

¹ See 47 C.F.R. §25.701(f)(2).

² See *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, Report and Order, 13 FCC Rcd 23254, 23290-91 (1998) (noting that the term “national educational programming supplier,” as defined in Section 335(b)(5)(B) of the

educational and instruction programming to rural America, RFD-TV fits squarely within these parameters and is precisely the type of programming service that both Congress and the Commission have sought to advance through the set-aside program.

Despite the fundamental educational and informational nature of RFD's service, Farm Journal claims that RFD "operates" as a "for-profit enterprise" and is not a "national educational programming supplier" for purposes of the set-aside program.³ Farm Journal also asserts that RFD's service does not qualify as "noncommercial programming." In effect, Farm Journal's Petition seeks nothing less than the termination of DBS carriage of RFD-TV, which would severely threaten the availability of the nation's only full-time network service dedicated exclusively to serving the rural and agricultural communities. The Commission should reject this extraordinary and draconian request as contrary to fact and sound public policy.

First, Farm Journal's claim that RFD is a commercial enterprise whose operation "does not appear" to comply with IRS rules applicable to tax-exempt entities is facially speculative and wholly groundless. By its charter documents, RFD is organized as a non-

Communications Act of 1934, "includes only noncommercial educational entities with an educational mission") (*DBS Public Interest Obligations First Report and Order*). As Chairman Kennard noted in his separate statement, "It is now up to the DBS operators and the many programmers poised to take advantage of this set-aside to meet the challenge of enhancing the quality and variety of public interest programming available to the public. If recent developments are any indication, I expect the public to benefit tremendously. Long gone are the days when 'public interest' programming was synonymous with 'boring.' Today, creative operators and programmers are responding aggressively to the public's yearning for quality public interest programming and using the various media at their disposal to meet this challenge." *Id.*, Statement of Chairman William E. Kennard.

³ Another commenter, Free Press, improperly accuses RFD of "violating" 47 U.S.C. § 335 and Section 73.621 of the Commission's Rules. Of course, none of the programming services offered by RFD "violate" any provision of the Communications Act or the Commission's Rules. RFD is not a licensed television station, so Section 73.621 is simply not applicable. The only issue in this proceeding is whether DIRECTV and EchoStar may continue to count RFD's service as a "set-aside" channel.

profit corporation with the sole authorized purpose of providing educational programming to rural homes and fostering the viability of the farming community. Consistent with this mission, RFD in fact operates in a manner that resembles a typical member-supported noncommercial television station. Moreover, less than one year ago, the IRS determined that RFD is qualified as a “public charity.” Thus, Farm Journal’s allegations are nothing more than pure conjecture, which the Commission rightly ignores in its decision-making processes.

Second, Farm Journal grossly mischaracterizes the fundamental nature of RFD’s program service. All of the programming distributed on RFD-TV is carried because RFD has concluded that service provides specific educational or informational value to its viewers. For example, RFD-TV periodically provides coverage of various auctions of livestock in order to inform viewers, and not, as Farm Journal surmises, to facilitate a commercial transaction. As comments in this proceeding demonstrate, these events provide valuable, real-time information on factors that affect the economic health of the cattle industry to the hundreds of thousands of ranchers and other individuals with interests in this key component of the nation’s food supply. Critically, RFD does not, as Farm Journal suggests, profit from its broadcast of these auction events.

Farm Journal also mislabels *RFD-TV Live* as “pay-for-play programming.” *RFD-TV Live* provides an unparalleled opportunity for a nationwide audience to interact with, and pose questions to, leading professionals, industry experts, lawmakers and government officials on a variety of topics of critical interest to the rural and agricultural communities. For example, in 2005 *RFD-TV Live* produced the “Farm Bill Forum” which enabled viewers from around the country to listen, and pose questions, to Secretary

of Agriculture Mike Johanns on the 2007 Farm Bill. *RFD-TV Live* also has regularly featured programs dealing with breaking news events (such as the “Mad Cow” scare) and new technology in agriculture. Just three months ago, Senator Conrad Burns and Thomas Dorr, U.S. Department of Agriculture Undersecretary for Rural Development, appeared on *RFD-TV Live* to discuss critical issues facing rural America, including broadband access and renewable energy sources.

Finally, since its founding six years ago, RFD has endeavored to provide a top-quality service of particular interest to an historically underserved population – rural Americans. Along the way, RFD has confronted substantial obstacles and, just like any other small start-up company that attempts to deliver a first-of-its-kind service, has not always been perfect in its execution. But RFD is dedicated to providing a service that meets the needs of rural America in a manner that fully satisfies all standards applicable to the set-aside program.

Beginning last winter, RFD commenced a systematic review of all programming carried on the network. RFD found that certain programming provided to it by suppliers had contained material that may not have been consistent in every respect with the Commission’s guidelines for underwriting and sponsorship. In response, RFD voluntarily took numerous steps to bolster its review process to ensure that all programming distributed by the network satisfies the underwriting guidelines. In particular, RFD hired additional staff, conducted training seminars for employees and program suppliers, and instituted a multi-level review process for all programming prior to air. Moreover, RFD is committed to working with the DBS carriers to ensure ongoing compliance with the rules applicable to the set-aside program.

The record demonstrates that RFD delivers substantial service to an historically underserved population and is committed to meeting all requirements applicable to set-aside channels. Thus, the Commission should affirmatively determine that RFD is a qualified national educational programming supplier that delivers a noncommercial service to America's rural community, and reject the Petition.

II. RFD PROVIDES EXTENSIVE EDUCATIONAL AND INFORMATIONAL PROGRAMMING TO A TRADITIONALLY UNDERSERVED MARKET

Farm Journal's Petition ignores a fundamental aspect of the network that is central to the FCC's consideration of RFD's service – the undeniably educational and informational nature of RFD's programming. It is axiomatic that the core purpose of the set-aside program is to promote the availability of educational programming,⁴ and that the Commission places a particularly high value on such programming services that cater to traditionally underserved segments of the national population.⁵

RFD-TV unquestionably fits this bill. RFD-TV came into being in order to provide an unprecedented informational outlet to traditionally underserved rural viewers. Indeed, the Commission has recognized the important role that RFD-TV has played in serving rural audiences by inviting a representative of the network to be a featured

⁴ As the legislative history of the Section 335(b) states, the purpose of the set-aside provision is "to define the obligation of direct broadcast satellite service providers to provide a minimum level of educational programming." House Committee on Energy and Commerce, H.R. Conf. Rep. No. 102-862, at 222 (1992).

⁵ As former Chairman William E. Kennard noted in implementing the set aside requirements, "Congress set aside a portion of the spectrum used by DBS to ensure that we have access to quality programming—programming for children, senior citizens, distance learning, health care applications, and for celebrating our diversity." *DBS Public Interest Obligations First Report and Order*, Statement of Chairman William E. Kennard, 13 FCC Rcd 23254.

speaker at the Rural Satellite Forum the agency sponsored in January 2004.⁶ In fulfilling its unique mission, the network focuses on providing its audience with a wide variety of informational and educational programs that are truly unique in the current programming marketplace. Among the network's extensive program line-up are dozens of such programs, including a host of agricultural news and public affairs offerings focusing on regional, national, and international issues; agricultural convention coverage; coverage of important legislative initiatives; numerous programs dedicated to the needs and interests of the equine industry; and regional and national rural lifestyle and family-friendly cultural programs. Without RFD-TV, there would be no comparable alternative for viewers interested in these important and highly specialized issues. This is especially true for many of the network's rural viewers who can only access video programming through DBS service.

A brief review of specific programs carried on RFD-TV demonstrates the wealth of educational and informational programming it provides:

- **Farmweek** is Mississippi's oldest and only locally-produced agricultural television program. The program provides an important vehicle for Mississippi

⁶ The Forum, entitled "Making the Rural Connection," was part of an FCC effort to educate the public about the availability of services, the development of new and innovative service, and economic approaches to serving the communications needs of rural America. Press Release, Federal Communications Commission, "Making the Rural Connection," FCC Rural Satellite Forum Final Details Announced (Jan. 20, 2004). In his remarks at the Forum, former Chairman Michael Powell emphasized the importance of "ensuring that Americans living and working in rural and remote parts of our Nation have access to the same kind of high quality, advanced communications services as do Americans living in cities and suburbs." Remarks of FCC Chairman Michael Powell at the FCC Rural Satellite Forum (Jan. 27, 2004), *at* <http://www.fcc.gov/cgb/rural/ruralforum.html>. RFD's Patrick Gottsch was invited to participate in a panel discussion about the role of satellite in providing advanced broadband Internet service and entertainment media to rural America that matches service already available in cities and suburbs.

State University specialists, scientists, and researchers to present useful information and land management advice directly to viewers. Produced by MSU's office of Agricultural Communications, Farmweek has received awards from, among others, the Association for Communication Excellence in Agriculture, Natural Resources, and Life and Human Sciences; the College Public Relations Association of Mississippi; and the Mississippi Association of Broadcasters.

- **Farm Bureau Today** is a weekly program produced by various state bureaus, including the Texas, Florida, Idaho, Mississippi, North Carolina, Ohio, Pennsylvania, and Virginia Farm Bureaus, along with the Alabama Farmers Federation. The Virginia Farm Bureau's program, *Down Home Virginia*, which airs on the first Tuesday of each month, is based on a newscast format with agricultural news at the top of the half-hour and feature stories filling the rest of the show. Programs from other state Farm Bureaus also air independently from *Farm Bureau Today*.
- **The Georgia Farm Monitor** is the only weekly news and informational program dedicated to Georgia's agricultural industry. The Monitor has been on the air continuously since 1966, when it began as a local program co-produced with the Georgia Farm Bureau.
- **Oklahoma Horizon** is a 30-minute weekly show that is a partnership between the Oklahoma Department of Agriculture, Food and Forestry and the Oklahoma Department of Career and Technology Education. The program aims to provide viewers with a global perspective on agricultural issues via stories with a local focus.
- **Making it Grow!** is a highly interactive, live television program focusing on the horticultural and agricultural issues of South Carolina. Produced by Clemson University and the South Carolina Educational Television Commission, Making it Grow! has won numerous awards, including two Regional Emmy Awards for Best Interview/Discussion Program and Set Design.
- **Today's Ag** is the only rural television program backed by land grant universities, providing viewers with a first-hand connection to the agricultural research from and knowledge put out by public universities. Today's Ag is produced by South Dakota State University, in cooperation with Iowa State University, the University of Nebraska, North Dakota State University, and Oklahoma State University.
- **This Week In AgriBusiness** is hosted by two of the most well-respected agricultural broadcasters, Orion Samuelson and Max Armstrong, and is the nation's only weekly one-hour agricultural news program. The show features agricultural meteorologist Greg Soulje's regional farm and ranch weather forecasts, as well as frequent visits from prominent agricultural leaders and lawmakers.

Since its inception, RFD has featured the work of a variety of governmental entities and rural organizations, and has given these important groups an opportunity to address matters of particular importance to their respective constituents, members and the public at large. For example, RFD-TV programming regularly includes representatives from the United State Department of Agriculture and numerous sub-agencies under the USDA. RFD also provides extensive support to Land Grant college and university programs with a focus on agriculture, including programs from the University of Illinois, Oklahoma State University, University of Nebraska, Louisiana State University, Texas A&M University, Clemson University, South Dakota State University, Iowa State University, and Mississippi State University.

Further, RFD-TV provides viewers with very specialized interests in farming and ranching with unparalleled access to the organizations that represent them, such as the American Farm Bureau Federation (5.1 million members), twenty-seven individual state Farm Bureau organizations, the National FFA Organization (490,000 members), the American Angus Association (35,000 members), the American Sheep Industry Association (12,000 members), the American Soybean Association (26,000 members), the Animal Health Institute, the Biotechnology Industry Organization, the Cotton Board, the Council for Biotechnology Information, Dairy Management, Inc., the Farm Equipment Manufacturers Association, the National Agrimarketing Association, the National Association of Conservation Districts, the National Association of County Agricultural Agents, the National Association of Farm Broadcasters, the National Christmas Tree Association, the National Corn Growers Association, the National Farmers Organization, the National Grange, the National High School Rodeo

Association, the National Peanut Board, the National Pork Board, the Renewable Fuels Association, the Soil & Water Conservation Society, the U.S. Grains Council, the U.S. Meat Export Foundation, the United Soybean Board, the National 4-H Council, Farm Safety 4 Just Kids, the American Quarter Horse Association, the Paso Fino Association, the American Paint Horse Association, the Arabian Horse Association, the Tennessee Walking Horse Breeders Association, the National Cutting Horse Association, the Mustang Horse Association, the National Reining Horse Association, the Bill Monroe Foundation, and the National Cattlemen's Beef Association.

Public comment received to date demonstrates overwhelming support for the educational nature of RFD-TV's programming from educators, farmers, ranchers and the general public.⁷ Commenters also make clear that RFD-TV's programming provides valuable information that is critical in a variety of subject areas, including equine training and rescue operations, farm education, safety for novice farmers, and matters of key importance to industry.⁸

⁷ See, e.g., Comments of Angela Meroshnekoff, Potter Valley, CA ("RFD-TV is very educational and not having it would be a big loss to my students."); Comments of Steve Kaluf, Muncie, IN ("The educational programming offered by RFD-TV is second to none"); Comments of Bruce Goode, Gunter, TX ("RFD-TV is a unique and wonderful educational channel."); Comments of Annette Culbertson, Lynchburg, SC (noting that RFD-TV not only is "educational for people in rural areas, but it also helps instill a sense of the earth and its many wonders to the next generation"); Comments of Chris Nelson, Visalia, CA ("The importance of the informational and educational programming that RFD-TV provides for rural America, and in particular, my farm and ranch family, cannot be overstated."); Comments of Rebecca Jacobs, Raleigh, NC ("RFD-TV is very educational.").

⁸ See, e.g., Comments of AnneMarie Cross, Crosswinds Equine Rescue, Tuscola, IL (Noting "as a rural farm owner [] and the president of a small nonprofit horse rescue" that her organization uses RFD-TV "every day for educational and training purposes [and] to help new horse owners and those interested in horses to learn more..."); Comments of Steve Kaluf ("As a family [] heavily involved in 4-H and FFA activities RFD-TV provides programming extremely beneficial to us"); Comments of Bruce Goode ("I have enjoyed watching RFD-TV for its variety of educational programming, but mainly because of the informational content useful for my equine-related business.");

The above-mentioned programs are just a small sampling of the educational and informational programs RFD-TV brings into the daily lives of millions of farmers and rural residents.⁹ RFD-TV's mission to fulfill the informational needs of an enormously important, but often overlooked, segment of our national population clearly satisfies a central goal of the set-aside program.

III. RFD IS A TAX-EXEMPT "PUBLIC CHARITY" THAT IS A QUALIFIED NONCOMMERCIAL ENTITY WITH AN EDUCATIONAL PURPOSE UNDER THE COMMISSION'S RULES FOR SET-ASIDE CHANNELS

Citing to a letter it filed with the IRS asking for an "investigation," Farm Journal asserts that "RFD-TV's operations *appear* to be inconsistent with that required of an entity organized as a tax-exempt, nonprofit organization."¹⁰ In addition to being speculative on its face, this assertion grossly mischaracterizes the nature of RFD's operations and misconstrues the legal implications of Farm Journal's IRS letter. This accusation should be rejected out of hand.

As Farm Journal acknowledges in its Petition, the FCC has specified that, for purposes of the set-aside program, the "tax code definition of non-profit will apply to

Comments of Jan Goethals, Royce City, TX (noting that "RFD-TV has been very helpful and may have prevented injury or worse by disseminating information and instruction not easily or readily available to the novice farmer"); Comments of Ronnie Ault, Seymour, IN (noting that RFD-TV provides "great information on crop input [] and livestock programming that is essential for the cattleman" as well as very enjoyable "tractor shows and tractor pulls"); Comments of Richard L. Nock, San Luis Obispo, CA ("The forums held by the NCBA and the Cattleman's Beef Board on critical issues within the beef industry [and aired on RFD-TV] have proven to be instrumental in resolving important issues in [] a divided industry."); Comments of Mark and Lois Fleer, Hoskins, NE (noting enjoyment of "US Farm Report and Ag PhD especially").

⁹ See Attachment 1 for a more complete listing of RFD-TV's educational and informational programs.

¹⁰ Farm Journal Petition at 4 (emphasis added); *see also id.* at 5.

qualify an entity as an eligible national educational programming supplier.”¹¹

Specifically, an “entity with an educational mission that is organized under the tax code as a nonprofit corporation will be eligible.”¹² RFD indisputably is organized as a non-profit corporation under the U.S. tax code. As shown in the attached Articles of Incorporation, RFD is a “non-profit corporation” whose sole authorized purpose is “to provide news, information and education programming for rural homes, [and] to enhance the ability of family farmers and farm communities to remain viable.”¹³ Moreover, less than one year ago, as part of a regular five-year review of RFD, the IRS reaffirmed RFD’s classification as a “public charity” exempt from taxation under Section 501(c)(3) of the tax code.¹⁴

RFD also operates in a manner that is fully consistent with its non-profit status and educational mission. Indeed, RFD’s balance sheet resembles that of a typical member-supported noncommercial educational television station. Nearly one-third of RFD’s annual revenues are derived from \$30 individual donations. Since 2003, more than 91,250 individuals from across the country have contributed to RFD.¹⁵ RFD also receives sponsorships from programmers, who contribute to RFD to help defray the costs

¹¹ *DBS Public Interest Obligations First Report and Order*, 13 FCC Rcd at 23290-91 (1998).

¹² *Id.*

¹³ Articles of Incorporation of RFD Communications, Inc. (Attachment 2).

¹⁴ See Letter from Lois G. Lerner, Director, Exempt Organizations, Rulings and Agreements, Internal Revenue Service to RFD Communications, Inc. (dated Jun. 16, 2005) (Attachment 3).

¹⁵ As a premium for their \$30 contributions, RFD donors are provided a subscription to “*RFD-TV The Magazine*,” the network’s bi-monthly program guide, and an RFD hat. Donors may renew for \$25.

incidental to the distribution of programs by the network.¹⁶ Contrary to Farm Journal's unsubstantiated allegations, RFD does not "sell" any time for advertising, and does not receive any income from the sale of any product or service by any program supplier.

Of course, these revenues are used to cover the substantial costs incurred by RFD in operating the network. RFD leases production studios in Nashville that serve as the network's command center. RFD also pays backhaul fees charges by DIRECTV and EchoStar to deliver the programming to their uplink facilities. Thus, the reality is that RFD distributes educational programming, and pays for its distribution, in much the same manner as other member-supported, non-profit organizations.

Finally, in stark contrast to the specific facts substantiating RFD's tax-exempt status – the specific organizational purposes set forth in the Articles of Incorporation, the recent IRS confirmation that RFD is a "public charity," and operations that are fully consistent with non-profit status – Farm Journal has presented nothing more than wholly speculative claims and beliefs. For decades, it has been standard Commission policy not to take cognizance of alleged non-FCC conduct unless an appropriate trier of fact has made a final adverse determination.¹⁷ The IRS, and not the FCC, is clearly the proper

¹⁶ See 47 C.F.R. § 73.621(d) (authorizing noncommercial television stations to "broadcast programs produced by or at the expense of, or furnished by persons other than the licensee, if no other consideration than the costs incidental to its production and broadcast are received by the licensee").

¹⁷ *Policy Regarding Character Qualifications In Broadcast Licensing*, 102 FCC 2d 1179, 1189, 1205 ¶ 48 (1986) (stating that the FCC "will not take cognizance of non-FCC misconduct involving criminally fraudulent misrepresentations, alleged criminal activity and antitrust or anticompetitive misconduct unless it is adjudicated" and that "there must be an ultimate adjudication by an appropriate trier of fact, either by a government agency or court, before [the FCC] will consider the activity in [its] character determinations"); see also *Policy Regarding Character Qualifications in Broadcast Licensing*, 7 FCC Rcd 6564, 6566 (1992) ("broadcast applicants will need to report only adverse findings or adverse final actions taken by an ultimate trier of fact").

agency with jurisdiction and expertise to determine whether RFD is in compliance with *tax* laws. Thus, Farm Journal's inflammatory and unsupported allegations should be ignored.

IV. RFD IS COMMITTED TO THE DELIVERY OF A PUBLIC SERVICE THAT SATISFIES THE COMMISSION'S STANDARDS FOR NONCOMMERCIAL EDUCATIONAL PROGRAMMING

RFD has endeavored to create a program service for the benefit of a vital, but traditionally underserved, rural population. With extremely limited resources and few employees, RFD has accomplished much in its first five years of existence. Despite significant obstacles, it has succeeded in creating a first-of-its-kind service that brings programming of direct relevance to the people in rural America who need and desire it the most. Critically, RFD's ability to provide this service today is directly attributable to the creation of the DBS set-aside program. Thus, RFD is committed to meeting all requirements applicable to set-aside services.

A. RFD-TV's Coverage of Livestock Auctions Provides Valuable Information to the Agricultural Community About an Essential Element of the Market and Is Consistent With the Network's Noncommercial, Educational Mission

Farm Journal contends that livestock auctions covered by RFD-TV constitute impermissible "program-length commercials."¹⁸ Farm Journal mischaracterizes the nature of this important programming.

Like other programming provided by RFD-TV, coverage of the livestock auctions serves an important public interest purpose. RFD does not cover the auctions to facilitate

¹⁸ Farm Journal Petition at 13. A small number of commenters support this contention. *See* Comments of USFR Media Group (May 22, 2006); Comments of Intermountain Communications, LLC (May 18, 2006); Comments of Western Video Market (May 18, 2006).

a commercial transaction. Rather, the auctions provide valuable market-based information about the health and functioning of the market that otherwise would be unavailable to the hundreds of thousands of livestock ranchers and other parties with interests in this crucial sector of the food chain.

According to the latest USDA agricultural statistics, approximately 790,000 individual farms and ranches are involved in the production of cattle in the United States. Due to the remoteness of most of these enterprises, accurate and timely information about critical variables that affect today's cattle industry – breed, weight, location, vaccination programs, weather conditions – is difficult to obtain. For these farmers and ranchers, there is no substitute for being able to “see” first-hand how these variables affect their industry, without having to travel substantial distances to view an auction in person. Thus, at the request of cattlemen, in 2002 RFD-TV began carrying a wide variety of video auctions that feature breeds from every segment of the beef industry and originate from around the country during the year.

RFD does not encourage or facilitate participation in an auction by viewers. Actual buyers must be approved before the auction and are given a private telephone number by the sale organizer to participate in the actual auction. This private bid-line number is never put on the screen during the auction and, thus, the “public” can not and is not participating in the actual auction, yet can witness the results first-hand.¹⁹

¹⁹ Moreover, in light of the time lag caused by delivering a video feed from the auction site via satellite or fiber link to RFD-TV's Nashville studios, then uplinking the feed on Ku-band satellite from Nashville to EchoStar's and DIRECTV's central receive sites, then compressing and uplinking the feed to their subscribers, the video appearing on screen is no longer “live.”

This programming provides ranchers and farmers with data they need to plan and manage their own businesses, in much the same way that an investor may be interested in a public television station's coverage of the stock market.²⁰ For those simply interested in the cattle business generally, moreover, the program offers a "behind the scenes" look at a fascinating part of the livestock industry and an opportunity to learn about the process by which major livestock transactions are managed. Indeed, some commenters noted that the auctions are simply enjoyable to watch.²¹

In addition to regular feeder cattle and bred stock auctions, specialty auctions are featured from time-to-time to showcase major breeds of interest to the public. Further, due to viewer demand, RFD has recently added a few equine auctions, including carriage and promotion of the Bureau of Land Management's Wild Horse & Burro auction and weekly adoption program at locations throughout the country to highlight efforts to find good homes for these animals.

Finally, Farm Journal baldly speculates that RFD-TV "apparently" airs the auctions "in exchange for payments."²² In fact, RFD-TV does not receive *any* proceeds

²⁰ See, e.g., Comments of Robert Myers, Pelican, LA (noting use of RFD-TV "for agricultural information and valuation of cattle" as well as "critical information in macro management of [his] business"); Comments of Steve Stephenson, Stanfield, AZ ("RFD-TV has given [those] in the cattle business a method of price discovery that would otherwise be virtually impossible."); Comments of Leroy Hill, Geyser, MT (noting that "a good share of the neighboring ranches [make] marketing decisions based on [the] sales" shown on the Superior Cattle Auction); Comments of Jay W. Johnson, Happy, TX (noting usage of Superior Livestock Auction and Superior Productions to "stay in tune" with market dynamics).

²¹ See, e.g., Comments of Angel Burrill ("I [] enjoy watching the auctions that are shown [] on this great channel").

²² Farm Journal Petition at 13. Also, Farm Journal's claim that Superior auction has grown from 15 to 300 employees since carriage commenced on RFD is a gross distortion of the facts. Farm Journal Comments at 7. According to the same Exhibit cited by Farm Journal for this outrageous allegation, Superior had 15 representatives at the time the

from the auctions, and has absolutely no financial interest in the outcome of any transaction.²³

For these reasons, RFD-TV strongly believes that its coverage of the livestock auctions serves an important informational purpose to its viewers and is fully consistent with the network's noncommercial educational objectives.

B. *RFD-TV Live* Delivers Valuable “Real World” Information to Farmers, Ranchers, and Rural Residents and Offers Unparalleled Opportunities for Viewers Nationwide to Interact with Lawmakers, Government Officials, and Experts in a Variety of Subjects of Unique Interest to Rural America

Farm Journal disparages *RFD-TV Live* as an “infomercial,” but again bases its allegation on conjecture rather than fact.²⁴ *RFD-TV Live* has greatly facilitated communication between rural and agricultural organizations, companies, government agencies and their members, constituents, and interested parties. The program typically airs for one hour during prime time and is run in a panel format that provides an opportunity for audience members to call in and ask questions of the expert guests.

A few examples illustrate the fundamentally educational and informational nature of this program. In July 2005, *RFD-TV Live* hosted and aired the first “Farm Bill Forum”

company was formed in 1987. Farm Journal Comments, Exhibit D. RFD began carrying auctions from Superior in 2002.

²³ As noted above, some programmers, including Superior Auction, provide sponsorships that help defray the cost of distributing programming on the network. These sponsorships are fully consistent with the limitations imposed by the Commission's rules on noncommercial television licensees. See 47 C.F.R. § 73.621(e).

²⁴ Farm Journal's claims and suspicions (Comments at 9-10) about a telephone call from “John Head” during a recent *RFD-TV Live* program are unsubstantiated and puzzling. To RFD's knowledge, no such person was on the call-in line “early.” Nor does RFD “plant” calls. Each and every show has phone banks full of callers waiting to get on the air and pose their questions.

in conjunction with the U.S. Department of Agriculture. The USDA forums, which were held across the country throughout 2005, were designed to seek input from America's farmers, ranchers, and rural residents on the 2007 Farm Bill. The first forum, which lasted for four hours, featured Secretary of Agriculture Mike Johanns. As Secretary Johanns noted in his remarks at the forum, the feedback received from the public through the forums would be used to help determine the best course for a new Farm Bill. Among the policy issues on which the USDA sought public input were: the competitiveness of U.S. agriculture in global and domestic markets; challenges facing new farmers and ranchers as they enter agriculture; the appropriateness and effectiveness of the distribution of farm program benefits; the achievement of conservation and environmental goals; and the enhancement of rural economic growth and opportunities to expand agricultural products, markets, and research.

In addition, in March 2006, *RFD-TV Live* produced "Prospering in Rural America: An Inside Look at the Progress of Today's Rural Communities." This program featured interviews with Senator Conrad Burns, who discussed broadband access in rural communities; Thomas Dorr, U.S. Department of Agriculture Undersecretary for Rural Development, who addressed renewable energy; and Bob Young, Chief Economist for the American Farm Bureau Federation, who discussed a recent study on quality of life issues in rural America.

A list of other programs on *RFD-TV Live* shows the variety and depth of topics on which viewers are given the unique opportunity to comment and ask questions to the nation's leaders in rural and agricultural issues:

- **Beef Industry** – Programs have featured executives from the National Cattlemen’s Beef Association and the Beef Board and taken calls regarding the status of the “Beef Checkoff” and the pending Supreme Court decision in 2005. To offer another perspective, several shows with the rival organization, R-CALF, were produced giving the audience the opportunity to ask questions of each organization.
- **Current Events** – During the “Mad Cow” scare, RFD-TV was the only television network that carried each and every USDA press conference “live” and in its entirety, and followed these up with “live” call-in segments where cattlemen and consumers had their questions answered and given the most up-to-date information.
- **Rural Lifestyle** – Homeowners new to the country and small acreage owners not involved with agriculture constantly request more programming that would assist with learning about equipment and provide “how-to” advice on living in the country. In a series of programs designed for the novice, *RFD-TV Live* recently focused on topics such as tractor safety, building a fence, haying, small tractor tips, and small animal enclosures featuring panels of experts with vast experience on these subjects. Viewers appreciate the informational aspects of these programs, which normally spend the first 10 minutes introducing the guests and discussing the topic in general, with the majority of each program devoted to simply answering as many questions as possible posed by the audience. Guests with different viewpoints and experiences are pursued when possible, as with a recent show on “fencing” that compared and contrasted electric and barb-wired options.
- **Rural Organizations** – *RFD-TV Live* offers nonprofit and other rural organizations the opportunity to address their membership and the public. Past shows have included Bob Stallman and the American Farm Bureau Federation to discuss legislative issues, Marilyn Adams with Farm Safety 4 Just Kids to stress safety for children on the farm, the National Pork Board to reach out to members with educational programming, and monthly “live” broadcasts from the National FFA Organization to reach out to their more than 478,000 members, educators, and alumni with news and information on the organization and upcoming events.
- **Agriculture** – Guests familiar with advances in technology and new products are in high demand from rural viewers involved with production agriculture, as developments in biotechnology, equipment, and genetics rapidly change the economic dynamics for farmers/ranchers. Recent programs have covered the explanation and importance of Animal I.D. tag programs and advances in fertilizer and weed control. Many programs have been extended from the original one-hour to ninety minutes due to the high volume of callers waiting to question each guest.

In short, *RFD-TV Live* provides valuable educational and informational programming in a variety of topics in a format that enables interested viewers to seek advice from leading experts in farming and ranching.

C. In View of Its Overall Record of Public Service, RFD's Program Service Has Substantially Complied with the Commission's Underwriting Requirements

Farm Journal's Petition completely ignores the fundamental nature and purpose of RFD's services. Rather, by focusing solely on a limited number of segments from certain programs, Farm Journal leaps to the conclusion, incorrectly, that RFD-TV is a "commercial" service that should be deleted from DBS set-aside channels. Neither Farm Journal's unsupported conclusion nor its draconian attempt to deprive millions of rural residents of the only source of programming dedicated to their interests is grounded in fact or warranted in law.

The comments filed to date make clear that RFD delivers a service that rural and agricultural populations find to be valuable, educational, informative and, critically, unquestionably family-friendly.²⁵ These commenters note that RFD-TV is the only source of programming that directly serves their interests. Many rural viewers also state that RFD-TV is available to them exclusively through DBS. Thus, the great weight of

²⁵ See Comments of Ed Trotter, San Angelo, TX ("RFD-TV provides excellent family oriented programming aimed primarily at the agricultural and rural community.... [I]t is refreshing for the family to be able to watch RFD-TV together."); Comments of Annette Culbertson, Lynchburg, SC (noting as a "horse lover [and] the mother of a 3 year-old" that "it is a relief to be able to watch TV with [her son] in the room without fear of sex-oriented commercials, violent previews, [or] obscene language."); Comments of Leroy Hall, Geyser, MT ("RFD-TV gives such [] good family viewing"); Comments of Mark and Lois Fleer, Hoskins, NE ("It is nice to be able to watch some decent TV programs without having to worry about what is shown.").

the record shows that RFD's overall service provides educational and informational programming to rural America.

As noted above, RFD's exhaustive internal audit of its programming determined that some material aired on the network in the past may not have comported in every respect with the limits imposed on underwriting and sponsorship announcements.²⁶ Critically, none of the announcements were inserted or "sold" by RFD. Rather, the material was already imbedded in the programs provided to RFD for distribution on the network. Moreover, in virtually every announcement described in Farm Journal's Petition and Comments, the announcement involved a product or service that was materially related to the particular program in which it was carried. Due to extremely limited manpower, however, RFD did not detect all such announcements prior to airing.

In effect, Farm Journal asks the Commission to impose an unprecedented standard of strict liability for noncommercial services and subject any programmer to the possibility of revocation of its noncommercial status. But Farm Journal points to no rule, decision, or public policy that would impose a standard of perfection on noncommercial services or would justify such a punitive outcome. Indeed, in enforcement actions taken against noncommercial television licensees for prior violations of the underwriting rules, the Commission has consistently determined that the most appropriate policy objective is to foster compliance, not to revoke the station's license or, as Farm Journal seems to desire here, threaten a service with extinction.²⁷

²⁶ RFD notes that many of the announcements carried on the network are from non-profit entities.

²⁷ See, e.g., *American Family Association, Licensee of Noncommercial Educational Stations WAEF(FM), Cordele, Georgia, WBJY(FM), Americus, Georgia*, 19 FCC Rcd 6414 (Enf. Bur. 2004) (admonishing licensee for broadcasting advertisements in violation

RFD submits that its overall record of public service is consistent with the intent and purpose for which the DBS set-aside program was created, and demonstrates substantial compliance with the rules applicable to such services. As detailed below, moreover, RFD has developed a stringent compliance program to ensure that every effort is made to deliver a service that consistently meets the Commission's standards for noncommercial programming on set-aside channels.

V. RFD HAS ESTABLISHED AND IMPLEMENTED A DETAILED PLAN TO ENSURE COMPLIANCE WITH THE COMMISSION'S UNDERWRITING STANDARDS

RFD takes seriously its responsibilities as a programmer of a qualified DBS set-aside channel. To this end, RFD has instituted updated procedures to ensure that all programming distributed on the network comports with the Commission's standards for underwriting in noncommercial program services. Principally, RFD has augmented its program review process by substantially increasing staff, engaging outside experts, and developing improved internal procedures for monitoring programming prior to air:

- RFD created a new position (Assistant Program Director) and hired a dedicated person, based in the network's Nashville Operations Center, whose sole responsibility is to review all programming prior to air for compliance with the FCC's underwriting guidelines and RFD-TV's companion company standards for programming.

of the underwriting standards); *Jones College, Licensee of Noncommercial Educational Station WKTZ-FM, Jacksonville, Florida*, 18 FCC Rcd 24971 (Enf. Bur. 2003) (same); *Daystar Public Radio, Inc., Licensee of Noncommercial Educational Station WKSG(FM), Cedar Creek, Florida*, 17 FCC Rcd 13297 (Enf. Bur. 2002) (same); *Calvary Bible College, Licensee of Noncommercial Educational Station KLJC(FM), Kansas City, Missouri*, 17 FCC Rcd 19144 (Enf. Bur. 2002) (same); *Brevard Youth Education Broadcasting Corporation, Licensee of Noncommercial Educational FM Station WCEE-LP, Melbourne, Florida*, 20 FCC Rcd 3944 (Enf. Bur. 2005) (adopting a Consent Decree terminating an investigation into possible underwriting violations); *WVRM, Inc., Licensee of Noncommercial Educational Station WCNJ(FM), Hazlet, New Jersey*, 20 FCC Rcd 4964 (Enf. Bur. 2005) (same).

- RFD hired a new General Manager for the Nashville Operations Center who is responsible for ensuring all outside program suppliers understand, and comply with, underwriting limitations. The General Manager is also responsible for the administration and standardization of all RFD's programming policies and practices.
- RFD hired a full-time Chief Financial Officer and a full-time Chief Operating Officer to augment existing management. Specifically, the CFO and COO will help establish policies and procedures for the network, review financials, and oversee general policies to assure that RFD remains a viable and qualified nonprofit organization.
- RFD engaged legal counsel, including corporate counsel and special communications counsel, to advise on contractual and regulatory matters, in particular, the requirements imposed by the FCC on the distribution of noncommercial educational programming by qualified entities.
- RFD has reviewed, revised, and updated its policies regarding program content provided by outside suppliers. These enhanced policies are described in a recently revised Program Agreement that expressly reaffirms the requirement for all programming to comply with the underwriting limits imposed on noncommercial program services.
- Finally, RFD has conducted, and will continue to conduct, numerous education seminars for staff and program suppliers to ensure a complete understanding of acceptable noncommercial programming practices. RFD will monitor the effectiveness of these efforts, and modify them as required to ensure that best practices are followed.²⁸

Moreover, RFD is committed to working cooperatively with the DBS carriers and will continue to monitor and update its compliance plan as necessary to ensure ongoing satisfaction of all requirements applicable to set-aside services. RFD also will comply

²⁸ RFD's compliance program is similar in material respects to programs implemented by noncommercial television licenses in connection with consent decrees entered into with the Commission. See *Brevard Youth Education Broadcasting Corporation*, 20 FCC Rcd 3944 (Enf. Bur. 2005) (adopting Consent Decree terminating investigation into possible underwriting violations); *WVRM, Inc.*, 20 FCC Rcd 4964 (Enf. Bur. 2005) (same). Specifically, RFD has established and will maintain a multi-level review procedure for underwriting content to be aired on the network; (2) RFD will continue to conduct training on acceptable underwriting content for all station management and staff responsible for underwriting content; and (3) RFD has implemented and will maintain a plan to proactively educate prospective underwriting clients about appropriate program content.

with any determination by the Commission that carriage of any particular material is not consistent with the requirements for set-aside channels. In short, RFD has voluntarily engaged in substantial efforts to ensure that its programming fully comports with the standards imposed by the Commission for noncommercial material.

VI. THE COMMISSION SHOULD CONFIRM THAT RFD IS A QUALIFIED NATIONAL EDUCATIONAL PROGRAMMING SUPPLIER THAT PROVIDES A NONCOMMERCIAL EDUCATIONAL AND INFORMATIONAL SERVICE TO THE PUBLIC

For all of the reasons stated herein, RFD respectfully submits that the Commission should affirmatively determine that the network is a qualified “national educational programming supplier” for purpose of the DBS set-aside program, without which RFD-TV would not exist today. In particular, given RFD-TV’s outstanding track record as an educational programmer dedicated to a traditionally underserved market and the voluntary implementation of an enhanced compliance program, continued participation in the set-aside program would serve the public interest and the needs of rural America. Certainly, the action sought by Farm Journal – a finding that, for all practical purposes, would cripple RFD’s ability to deliver programming to rural America – would be utterly inconsistent with the purpose for which the set-aside program was created.

VII. CONCLUSION

For all of the foregoing reasons, the Commission should reject Farm Journal's Petition and affirm that RFD is a qualified national educational programming supplier that distributes noncommercial educational and informational programming.

Respectfully submitted,

RFD COMMUNICATIONS, INC.

/s/ Todd M. Stansbury

By: _____

Lawrence W. Secrest, III

Todd M. Stansbury

Martha E. Heller

of

WILEY REIN & FIELDING LLP

1776 K Street, NW

Washington, DC 20006

(202) 719-7000

Dated: June 5, 2006

Its Attorneys

ATTACHMENT 1

RFD-TV EDUCATIONAL AND INFORMATIONAL PROGRAMMING

RFD-TV EDUCATIONAL AND INFORMATIONAL PROGRAMMING

RFD-TV is an unprecedented outlet for agricultural and rural programming that provides an impressive range of informational and educational programs that are truly unique in the current programming marketplace. The network's extensive program line-up includes: a host of agricultural news and public affairs shows; agricultural convention coverage; coverage of agricultural legislative initiatives; numerous programs dedicated to the needs and interests of the equine industry; and a rich variety of rural lifestyle and cultural programs. RFD-TV highlighted a few of these programs in the attached Opposition. The following list helps further illustrate the caliber and diversity of programming RFD-TV has been bringing to rural America for the last six years.

Agriculture

- FFA Today & FFA Convention
- RFD-TV "Live" Specials
- Virginia Farming
- Michigan Magazine
- Farm Bureau Today
- Honeybees & Beekeeping
- AgPhD
- Prairie Farm Report
- The Cattle Show
- Louisiana Agriculture
- Georgia Farm Monitor
- Brazil Ag Report
- Best of Making It Grow
- Farm Week
- Superior Livestock Previews and Auctions
- The American Rancher
- This Week In Agribusiness
- Today's Ag

Rural Lifestyle

- RFD-TV "Live" Specials
- Michigan Magazine
- Campfire Café
- Living The Country Life
- Ag Lifestyles
- Ms. Lucy's Cajun Cooking
- Quilt In A Day
- America's Heartland

- Rodeo
- Texas Country Reporter Classics
- Alaska TV Magazine
- Oklahoma Horizons
- Dakota Life
- Rural Heritage
- Practical Woodworker
- Dutch Oven Cooking
- California Country
- Texas Country Reporter

Equine

- Dennis Reis Universal Horsemanship
- Extreme Cowboy Race
- Craig Cameron Ride Smart
- RFD-TV “Live” Specials
- Clinton Anderson DownUnder Horsemanship
- Chris Cox Horsemanship
- Horse Sense
- Parelli Natural Horsemanship
- Horsecity.com TV
- Training Mules and Donkeys
- Best of America By Horseback
- Horse Babies
- All Around Performance Horse
- The Roping Show
- Charles Wilhelm Horsemanship
- Mustang – America’s Wild Horse
- Dressage UnLtd
- Horseman’s Edge
- Ken McNabb Horsemanship
- Best of DownUnder Horsemanship
- Inside Eventing
- Monty Roberts Horsemanship
- Bureau of Land Management Wild Horse and Burro Auctions

Music and Entertainment

- Extreme Cowboy Race
- Trains and Locomotives
- RFD-TV “Live” Specials
- Nashville on the Road

- Cumberland Highlanders
- Reno's Old Time Bluegrass Festival
- Gospel Sampler
- Machinery of the Past
- National Tractor Pulling
- Bluegrass & Backroads
- I Love Toy Trains
- Justin Wilson's Looking Back
- Big Joe Polka Show
- Gaither Gospel Hour
- Classic Tractor Specials
- Wilburn Brothers Show
- Pop Goes the Country
- Jimmy Sturr Show
- Porter Wagoner Show
- Branson Jam
- Heart to Heart Classics
- Midwest Country Music

ATTACHMENT 2

ARTICLES OF INCORPORATION
OF
RFD COMMUNICATIONS, INC.

ARTICLES OF INCORPORATION

ARTICLE ONE

The name of the corporation is RFD Communications, Inc.

ARTICLE TWO

The corporation is a non-profit corporation.

ARTICLE THREE

The period of its duration is perpetual.

ARTICLE FOUR

The purpose or purposes for which the corporation is organized are to provide news, information and education programming for rural homes, to enhance the ability of family farmers and farm communities to remain viable.

ARTICLE FIVE

The street address of the initial registered office of the corporation is 2040 Loop 336 West, Suite 125, Conroe, Texas 77304 and the name of its initial registered agent at such address is Ray A. Burgess.

ARTICLE SIX

The number of directors constituting the initial board of directors is three and the names and addresses of the persons who are to serve as the initial directors are

Patrick Gottsch	144 Meadowglen Circle, Coppell, Texas 75019
John Gesek	465 S. Dentontap, Coppell, Texas 75019
Ray A. Burgess	2040 Loop 336 West, Suite 125, Conroe, Texas 77304

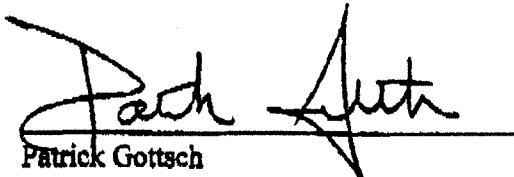
ARTICLE SEVEN

The name and street address of each incorporator is:

Patrick Gottsch 144 Meadowglen Circle, Coppell, Texas 75019

John Gesek 463 S. Dentontap, Coppell, Texas 75019

Ray A. Burgess 2040 Loop 336 West, Suite 125, Conroe, Texas 77304


Patrick Gottsch


John Gesek

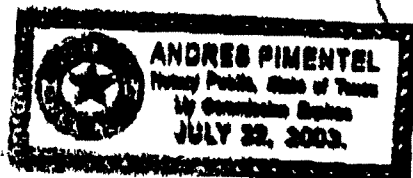

Ray A. Burgess

STATE OF TEXAS

COUNTY OF Dallas

Before me, a notary public, on this day personally appeared Patrick Gottsch, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, severally declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 18th day of May, 2000.




Notary Public, State of Texas

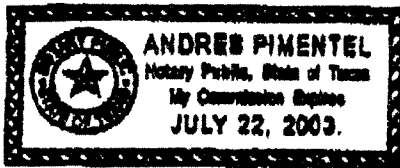
My commission expires: July 22, 2003

STATE OF TEXAS

COUNTY OF Dallas

Before me, a notary public, on this day personally appeared John Gesek, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, severally declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 18th day of May, 2000.



[Signature]
Notary Public, State of Texas

My commission expires: July 22, 2003

STATE OF TEXAS

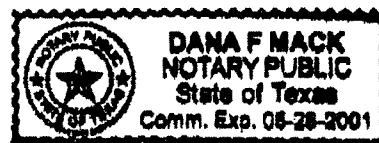
COUNTY OF Montgomery

Before me, a notary public, on this day personally appeared Ray A. Burgess, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, severally declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 17th day of May, 2000.

[Signature]
Notary Public, State of Texas

My commission expires: 5/22/01



ATTACHMENT 3

LETTER FROM INTERNAL REVENUE SERVICE TO
RFD COMMUNICATIONS, INC.

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: JUN 16 2005

RFD COMMUNICATIONS INC
22424 WRIGHT PLAZA
ELKHORN, NE 68022

Employer Identification Number:
75-2906765

DLN:

17053092786005

Contact Person:

THOMAS C KOESTER

ID# 31116

Contact Telephone Number:

(877) 829-5500

Public Charity Status:

509(a)(2)

Dear Applicant:

Our letter dated MARCH 2001, stated you would be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code, and you would be treated as a public charity, rather than as a private foundation, during an advance ruling period.

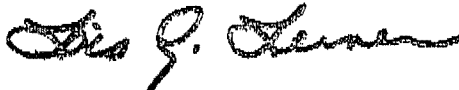
Based on the information you submitted, you are classified as a public charity under the Code section listed in the heading of this letter. Since your exempt status was not under consideration, you continue to be classified as an organization exempt from Federal income tax under section 501(c)(3) of the Code.

Publication 557, Tax-Exempt Status for Your Organization, provides detailed information about your rights and responsibilities as an exempt organization. You may request a copy by calling the toll-free number for forms, (800) 829-3676. Information is also available on our Internet Web Site at www.irs.gov.

If you have general questions about exempt organizations, please call our toll-free number shown in the heading between 8:30 a.m. - 5:30 p.m. Eastern time.

Please keep this letter in your permanent records.

Sincerely yours,



Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

Letter 1050 (DO/CG)

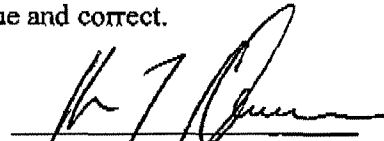
ATTACHMENT 4

DECLARATION OF KEVIN CLOONAN,
CHIEF FINANCIAL OFFICER OF RFD COMMUNICATIONS, INC.

DECLARATION OF KEVIN CLOONAN

I, Kevin J. Cloonan, hereby declare under penalty of perjury:

1. I am Chief Financial Officer of RFD Communications, Inc.
2. I have read the foregoing Opposition of RFD Communications, Inc. to Farm Journal, Inc. Petition for Declaration Ruling. To the best of my knowledge, information and belief, the facts contained therein are true and correct.


Kevin J. Cloonan

June 5, 2006